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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
Request for Review by) Docket Nos. 96-45 and 97-21
Unicom, Inc. of Decision of)
Universal Service Administrator)

To: The Commission

REPLY TO RESPONSE OF GENERAL COMMUNICATION INC.

Unicom, Inc. ("Unicom"), by its counsel, hereby replies to the Response filed by General Communication Inc. ("GCI") on May 1, 2002, to Unicom's "Petition for Leave to File Supplement to Petition for Review" ("Petition").¹ GCI does not oppose the Commission's acceptance of Unicom's Petition, filed April 22, 2002. GCI does, however, disagree on the import of the January 17, 2001, memorandum from the Office of Legal Counsel, U.S. Department of Justice ("DOJ Memo") appended to Unicom's Supplement.

GCI asserts that the DOJ Memo supports its "argument that Section 7(b) of the Indian Self-Determination Education and Assistance Act ("ISDEAA"), 25 U.S.C. Section 450e(b), is not applicable to universal service support provided pursuant to the Commission's rural health care program." GCI Response at 1. GCI's argument is predicated on the assertion that the rural health care program benefits Indians only incidentally and was not intended to benefit Indians because of their status as Indians. *Ibid.*

¹ On May 6, 2002, Yukon-Kuskokwim Health Corporation ("YKHC") filed an Opposition to Unicom's Petition for Leave to File Supplement. A reply to YKHC's Opposition is not due until May 16, 2002.

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This interpretation is in error. As the Commission has stated, “[t]he rural health care program provides support to assist rural health care providers in purchasing telecommunications and information services. These programs are open to all eligible applicants, including Indians and Indian businesses. Moreover ... the FCC is looking for ways to address specific universal service needs among Indians.”²

The Commission has further acknowledged that the rural health care program is intended to benefit Native Americans. For example, when it sought comment on ways to enhance the availability of rural health care support in underserved areas, it specifically referenced tribal areas as intended beneficiaries. Indeed, the Commission expressly sought “to ensure that our efforts are consistent with principles of tribal sovereignty, the federal trust relationship, and support for tribal self-determination.”³ This comports squarely with the DOJ view that the promotion of tribal sovereignty and self-government is “one of the central goals of the ISDEAA.”⁴

Consistent with the above, Native Americans in Alaska are, in fact, the chief beneficiaries of rural health care funding. The rural Alaska health program is primarily funded by the Indian Health Service through the Alaska Tribal Health Compact.⁵ Almost seventy (70) percent of the

² “Promoting Telecommunications Services Among Indians,” FCC Native American Initiatives website, <http://www.fcc.gov/web/tapd/indians/welcome.html>.

³ *In the Matter of Federal-State Joint Board on Universal Service: Promoting Deployment and Subscribership in Unserved and Underserved Areas, Including Tribal and Insular Areas (Further Notice of Proposed Rule Making)*, 14 FCC Rcd 21,177, 21,183-21,184 (para. 10) (1999).

⁴ DOJ Memo at 8.

⁵ The Alaska Tribal Health Compact (“ATHC”) is a self-governance agreement between the Secretary of Health and Human Services and Indian tribes and consortia of tribes in Alaska. Among the stated purposes of the ATHC is “to transfer to tribal governments, at a tribe’s request, the power to decide how federal programs, services functions and activities (or

funding commitments in Year 2 went to rural clinics in Alaska, where the vast majority of the patients are members of Alaska Native villages which are Federally recognized tribes.⁶

Finally, the DOJ Memo cites several Department of Agriculture programs for which neither the statute nor the implementing regulations expressly provide that Indian organizations are among the eligible or intended beneficiaries but which in some cases principally benefit Indians. These include the Federal Extension Service program which funds administration, technical, and other services and coordination of the extension work of the Department and the several States, Territories, and possessions, and the community food projects program under the Food Stamp Act for grants to private, nonprofit entities meeting certain criteria.⁷ The rural health care program is at least as much within the description “for the benefit of Indians” as these programs which DOJ affirmed are appropriately subject to Native American preferences.

For these reasons, as well as the reasons Unicom has set forth in its earlier filings, Native American preferences are applicable to rural health care applicants such as YKHC.

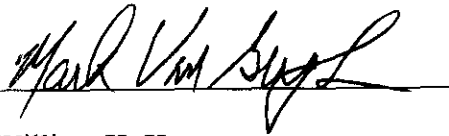
portions thereof) shall be funded and carried out ... to redesign health programs, activities function or services according to the priorities of the signatory tribes and co-signers ... to transfer to signatory tribes, acting individually or collectively ... the responsibility for the programs, activities functions and services of the Indian Health Service” ATHC, dated March 10, 2001, at pages 9-10.

⁶ See 65 Fed. Reg. 13302 (March 13, 2000) (list of Federally recognized Alaska tribal villages); see also Unicom “Reply to Oppositions to Petition for Review” filed December 14, 2001, at p. 17, citing USAC 2000 Annual Report, www.universalservice.org/reports/2000/pg36.asp.

⁷ DOJ Memo at pages 5-6.

Respectfully submitted,

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May 13, 2002

CERTIFICATE OF SERVICE

I, Yvette Morgan, hereby certify that the foregoing "Reply to Response of General Communication Inc." was served this 13th day of May, 2002, by depositing a true copy thereof with the United States Postal Service, first class postage prepaid, addressed to:

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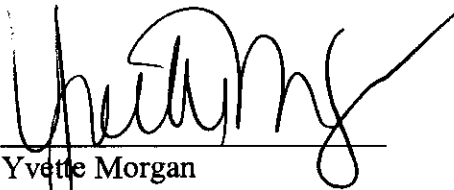
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